IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SALES TAX REFERENCE No.5 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA Sd/-
and
HON'BLE MS.JUSTICE H.N.DEVANI Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

S. K. MUNDRA

Appearance:

MR UDAY R BHATT AGP for Applicant No. 1

MR TANVISH U BHATT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 17/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. This reference has been made by the Sales Tax Tribunal under Section 69 of the Gujarat Sales Tax Act, 1969 (the Act) at the instance of the State of Gujarat raising and referring the following question of law for the opinion of this Court :-

"Whether on the facts and in the circumstances of the case, Gujarat Sales Tax Tribunal was justified in law in holding that (a) Sales of Bronze powder made during the period 1st July 1979 to 30th June 1980 by the opponent for the purpose of Sales Tax assessment are liable to be taxed under entry 9 of Schedule II A to the Gujarat Sales Tax Act, 1969, and not under entry 13 of Schedule III of the said Act; and

(b) Accordingly removing of penalty of Rs.2702/- imposed under section 45(6) of the said Act."

2. The respondent - assessee, a registered dealer under the Act, is a trader (reseller) in bronze powder. The assessee paid tax along with the returns on the basis that the bronze powder, which is used for printing of textile fabrics is covered by Entry 9 of Schedule II A of the Act. However, the Sales Tax Officer treated the sales as falling within Entry 13 of Schedule III to the Act and assessed accordingly for the period 01-07-1979 to 30-06-1980. He also levied penalty of Rs.2,702/- under Section 45(6) of the Act.

3. The assessee carried the matter in appeal before the Assistant Commissioner of Sales Tax (Appeal-I), Range 1/2, Ahmedabad. The appeal was dismissed and the order of assessment confirmed. Being aggrieved the assessee carried the matter further by way of Second Appeal No.45 of 1985 before the Tribunal. The Tribunal, for the reasons stated in its order dated 11-11-1987, allowed the appeal holding that taxability of bronze powder was governed by Entry 9 of Schedule II A to the Act. The Tribunal further held that the difference between the amount of assessed tax and the amount of tax paid would not exceed 20% of the tax paid and hence, penalty imposed under Section 45(6) of the Act was not liable to be sustained and accordingly deleted it.

4. Mr.Uday R. Bhatt, learned AGP appearing on behalf of the applicant - Revenue, submitted that the assessee was a selling dealer and as it was the assessee who was required to be assessed, the Tribunal committed an error in taking into consideration the use of the goods by the purchasers. In other words, the submission was that to decide as to within which entry a particular item would fall, only the use by a particular purchaser should not be taken into consideration, but all possible uses of the product are required to be taken into consideration. He supported this submission by pointing

out from the order of the Tribunal that the Government Agent representing the Revenue had categorically submitted before the Tribunal that "over and above its use in the textile industries for bringing out golden coloured designs on the cloths, it has many other uses such as moulding bronze idols, etc." Mr.Bhatt placed reliance on the decisions of this Court in the case of Quality Chemicals Vs. State of Gujarat, [1994] 94 STC 450 and in the case Gujarat Distributors Vs. State of Gujarat, [1975] 36 STC 116 to submit that the question of interpreting an entry in a taxing Schedule and giving its meaning in the popular sense would arise only if the entry contains language which is capable of being considered in the popular sense. That while construing a word which is of a technical or scientific character, its technical or scientific meaning is required to be assigned.

5. Mr.Tanvish U. Bhatt, learned advocate appearing on behalf of the respondent - assessee, has invited attention to the relevant entry being Entry No.9 in Schedule II A to the Act as well as Entry No.13 falling within Schedule III to the Act to submit that Entry No.13 was a residuary entry and the Revenue was in error in treating the goods in which the assessee is dealing as falling within the residuary entry, when there was a specific entry dealing with dyes and chemicals. He relied upon the order of the Tribunal and submitted that no interference was called for in light of the findings recorded by the Tribunal.

6. The relevant entries which are material for the present purpose read as under :-

Sch-II-A

9.	1-8-75 and onwards	Dyes and chemicals other than those specified in any other entry in this or any other schedule

Sch-III

13.	1.8.77 to 9.4.81.	All goods other than those specified from time to time in section 18 and in schedules I and II and in the preceeding entries.

7. The Tribunal has recorded the following findings "We have perused the samples of bronze powder in question and a piece of golden coloured design cloth..... ". "It is not in dispute that the appellant is carrying on the business of reselling bronze powder. The appellant has sold Venus Gold Bronze Powder to textile mills and Chippas for printing designs on clothes and the said powder is primarily and principally used to bring out golden coloured designs on cloths, after mixing in the said powder binders and other oily substance by the textile mills and Chippas. The powder in question is so used as dye that textile mills and Chippas bring out golden coloured designs on clothes and it plays the role of printing designs as dyes with the help of other materials like binders and oil or chemicals. ....."

8. While dealing with the contentions raised by the Government Agent before it, the Tribunal after referring to the submission that the bronze powder has many other uses such as moulding the bronze idols, etc. states "This use or other uses of the bronze powder in question are not narrated or stated in the record of the case. It transpires from the records that the primary and principal use of article in question in the appellant's case is by the textile industries, cotton mills or Chippas for bringing out golden coloured designs on the clothes. The learned Government Agent was unable to deny this fact found from the record." The Tribunal has further noted in Paragraph No.7 of its order that "No evidence or any authority is produced before us on behalf of any of the Department to establish that the bronze powder in question is mainly used as a metal powder in other industries. ....."

9. Therefore, in light of the aforesaid findings of fact it becomes apparent that the Tribunal has decided the controversy between the parties after appreciating the evidence on record and the failure of the Revenue to bring any material on record to dispute or disprove the evidence placed by the assessee. While doing so the Tribunal has specifically referred to the test formulated by the Supreme Court in the case of Atul Glass Industries (P.) Ltd. Vs. Collector of Central Excise, [1986] 63 STC 322 for the purposes of deciding whether a particular product falls within a specific item of the schedule. The Apex Court has enunciated the law thus "How is the product identified by the class or section of people dealing with or using the product ? It is generally by its functional character that the product is so identified. It is a matter of common experience that the identity of an article is associated with its primary

function. It is only logical that it should be so. When a consumer buys an article, he buys it because it performs a specific function for him. There is a mental association in the mind of the consumer between the article and the need it supplies in his life. It is the functional character of the article which identifies it in his mind." The aforesaid observations answer the contention raised by the learned AGP that only the case of the seller is to be taken into consideration while ascertaining as to in which entry a particular product would fall and not the use by the purchaser. The Apex Court has categorically stated that the functional character of the article on the basis of which the product is identified in the mind of the consumer has to be taken into consideration while ascertaining the correct entry.

10. In the case of Quality Chemicals (supra) relied upon by the learned AGP the following principles are culled out after considering various cases :

"(a) If the statute contains the language which is capable of being considered in popular sense, such language is to be considered in its popular sense ;

(b) Popular sense meaning would be that meaning which people conversant with the subject-matter with which the statute is dealing would attribute to it. For chemical products or chemicals, meaning which is known to the concerned persons dealing in chemical products or chemicals, is required to be assigned.

(c) If the word is of technical or scientific character, then it should be considered in technical or scientific manner.

Thus, even applying the aforesaid tests it is clear that the popular meaning or the meaning which is assigned in common parlance by the people conversant or dealing with the subject-matter or article would attribute to it has to be taken into consideration; and for chemical products or chemicals meaning which is known to the concerned persons dealing in chemical products or chemicals, is required to be assigned. The reliance by the learned AGP on principle (c) as aforesaid would not carry the case of the Revenue any further in as much as the item in question viz. bronze powder is not an article or a word of technical or a scientific character that it requires to be considered in technical or scientific manner.

11. In the case of The State of Gujarat Vs. Shah Bhagwanji Manekchand, [1982] 50 STC 147 while dealing with the same entry i.e. Entry No.9 of Schedule II A to the Act the Court after referring various decisions including a decision of this Court in the case of Gujarat Distributors (supra) laid down that "For an article to be qualified as "chemicals" within the meaning of entry 9 of Schedule II, Part A, to the Gujarat Sales Tax Act, 1969, it must be an intermediary chemical product which can be utilised as such for producing other finished products." Therefore, on application of the aforesaid test also it becomes amply clear that bronze powder is an article which is intermediary in nature and is used along with other articles for printing on cloth and hence assumes the character of a dye.

12. In light of what is stated hereinbefore and the findings of fact recorded by the Tribunal there is no infirmity in the impugned order of the Tribunal. The question referred to the Court for opinion is, therefore, answered in favour of the assessee and against the Revenue. The Tribunal was justified in law in holding that the assessee was liable to be taxed under Entry 9 of Schedule II A to the Act and not under Entry 13 of Schedule III to the Act on sales of bronze powder made during the period 01-07-1979 to 30-06-1980. The Tribunal was also justified in deleting the penalty of Rs.2,702/= imposed under Section 45(6) of the Act.

13. The Reference stands disposed of accordingly. There shall be no order as to costs.

Sd/- Sd/-

[D.A.MEHTA,J] [H.N.DEVANI,J]

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